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15

16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 OAKLAND DIVISION
19

20 ORACLE USA, INC., *et al.*,
21 Plaintiffs,
22 v.
23 SAP AG, *et al.*,
24 Defendants.
25

Case No. 07-CV-01658 PJH (EDL)

**DECLARATION OF HOLLY A.
HOUSE IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT
REGARDING PLAINTIFFS'
HYPOTHETICAL [FAIR MARKET
VALUE] LICENSE DAMAGES
CLAIM**

Date: October 28, 2009
Time: 9:00 am
Place: TBD
Judge: Hon. Phyllis J. Hamilton

1 I, Holly A. House, declare as follows:

2 1. I am an attorney licensed to practice law in the State of California and a
3 partner at Bingham McCutchen LLP, counsel of record for plaintiffs Oracle USA, Inc., Oracle
4 International Corporation, Oracle EMEA Ltd. and Siebel Systems, Inc. (collectively, "Oracle").
5 I make this declaration in support of Plaintiffs' Opposition to Defendants' Motion for Partial
6 Summary Judgment Regarding Plaintiffs' Hypothetical License Damages Claim. I have personal
7 knowledge of the facts stated within this Declaration and could testify competently to them if
8 required.

9 2. Oracle has sought in discovery and Defendants have thus far refused
10 production of SAP's research and development costs, which are relevant to proving the
11 significant costs SAP avoided by infringing Oracle's copyrights rather than developing them
12 legally and independently. Further, Oracle continues to seek supplemental production of SAP's
13 profit margins and any assignments of value per existing or acquired customer, which will
14 evidence SAP's reasonable revenue expectations as to customers they could lure away through
15 TomorrowNow. Oracle also has recently asked for production of SAP's largest value license
16 deals, which may provide reasonable benchmarks and which will be relevant to SAP's arguments
17 that they would never agree to pay (or never agreed to charge) any significant amount for
18 intellectual property.

19 3. Attached as **Exhibit A** is a true and correct copy of excerpts from the final
20 transcript of the April 17, 2009 Deposition of Hasso Platter at 47:19-24; 48:12-49:6; 62:7-64:4 &
21 68:23-69:6 as well as the cover page of the transcript and the court reporter's certification.

22 4. I have reviewed Paul Meyer's Declaration in Support of Oracle's
23 Opposition to Defendants' Motion for Partial Summary Judgment Regarding Plaintiffs'
24 Hypothetical License Damages Claim ("Meyer Declaration") and the numerous supporting
25 Exhibits he cites. I declare that the excerpts from deposition testimony attached to the Meyer
26 Declaration (Exs. 7, 12, 13, 19, 52, 55, 56, 57, 60 and 69 for SAP witness depositions and Exs.
27 22, 35, 36, 37, 38 and 39 for Oracle witness depositions) are true and correct copies of pages
28 from the final transcripts of those deposition along with the reporter's certification of the same

(with the exception of the recent deposition of Terry Hurst, Ex. 56, which is a true and correct copy of the transcript pages prior to the final 30 days available for correction).

5. I further declare that the Exhibits to the Meyer Declaration containing entire or excerpted documents produced by SAP or TomorrowNow in discovery (Exs. 6, 8, 11, 14, 23, 24, 25, 26, 27, 28, 44, 46, 47, 48, 49, 50, 51, 53, 54, 58, 61, 62, 63, 64, 66, 67, 68, 70, 71, 72 and 73) are true and correct copies of documents (or portions of documents) produced by Defendants in response to Requests for Production or Targeted Search Requests served by Oracle in the above-named litigation. All of the documents (with the exception of Exhibit 44) are, on their face, documents authored by Defendants. Exhibit 44 contains excerpts from a report apparently authored by Deloitte titled "SAP AG, Fair Value of Certain Assets, Liabilities and Legal Entities of Business Objects S.A. As of January 21, 2008" which was produced by Defendants to Oracle in response to a discovery agreement between the parties and can be further identified by the SAP Bates number Defendants inscribed on the bottom right corner of the document. 27 of these 31 documents were also attested to by SAP deponents in deposition. Oracle provided Defendants with copies of these exhibits before filing its opposition and Defendants agreed that they had no objections to the authenticity of those documents. Due to this agreement and to streamline this submission, Oracle does not submit the portions of the transcripts of depositions of SAP witnesses authenticating these Exhibits. However, should Defendants make an evidentiary objection to any of these Exhibits, Oracle reserves the right to respond to such objection.

6. The Exhibits to the Meyer Declaration containing entire or excerpted documents produced by Oracle in discovery (Exs. 9, 16, 18, 21, 29, 30, 33, 34, 40, 41) are true and correct copies of documents (or portions of documents) produced by Oracle in response to Requests for Production or Targeted Search Requests served by Defendants in the above-named litigation. Exhibit 9 was attested to by Larry Ellison at his deposition on May 5, 2009; a true and correct copy of the excerpt of his deposition transcript authenticating this Exhibit is attached hereto as **Exhibit B**. As for the other exhibits:

- 1 • Exhibit 16 contains excerpts from the Standard and Poor Report “Oracle
2 Corporation: Estimation of the Fair Value of Certain Assets and Liabilities of
3 PeopleSoft, Inc. as of December 28, 2004,” which was produced by Oracle in
4 response to requests to discovery requests on January 23, 2009 with the Bates
5 numbers ORCL 00313169-253. While Defendants have not asked any Oracle
6 witness about it, Ms. Catz authenticates it in her accompanying declaration as
7 an independent third-party valuation of the fair value of certain assets and
8 liabilities Oracle acquired from PeopleSoft, including intangible assets, which
9 was used to assist Oracle in its allocation of the purchase price for financial
10 reporting purposes. There is no basis for questioning its authenticity or
11 disputing its contents or its admissibility as a business record or to show
12 Oracle’s state of mind; moreover, the law permits Oracle’s expert to rely on
13 such materials. However, should Defendants make an evidentiary objection to
14 this document, Oracle reserves the right to respond to such objection.
- 15 • Exhibit 18 to the Meyer Declaration contains excerpts from the Duff & Phelps
16 report “Estimation of the Fair Value of Certain Assets and Liabilities of Siebel
17 Systems, Inc. as of January 31, 2006.” It was produced by Oracle in response
18 to discovery requests on February 6, 2009 and Bates numbered ORCL
19 00312747-819. While Defendants have not asked any Oracle witness about it,
20 Ms. Catz authenticates it in her accompanying declaration as an independent
21 third-party valuation of the fair value of certain assets and liabilities Oracle
22 acquired from Siebel, including intangible assets, which was used to assist
23 Oracle in its allocation of the purchase price for financial reporting purposes.
24 There is no basis for questioning its authenticity or disputing its contents or its
25 admissibility as a business record or to show Oracle’s state of mind;
26 moreover, the law permits Oracle’s expert to rely on such materials.
27 However, should Defendants make an evidentiary objection to this document,
28 Oracle reserves the right to respond to such objection.

- 1 • Exhibit 21 to the Meyer Declaration contains an excerpt from an October
2 2004 IDC Report “Market Analysis – Worldwide Enterprise Applications
3 2004-2008 Forecast and Analysis.” It is Bates numbered ORCL 00313337-84
4 and was produced by Oracle on February 6, 2009 in response to Defendants’
5 discovery requests in this litigation. There is no basis for questioning its
6 authenticity or disputing its contents or its admissibility; moreover, Oracle’s
7 expert can rely on such materials. However, should Defendants make an
8 evidentiary objection to this document, Oracle reserves the right to respond to
9 such objection.
- 10 • Exhibit 29 to the Meyer Declaration contains a worksheet labeled “PeopleSoft
11 Operating Model.” It is Bates numbered ORCL00313255 and was produced
12 by Oracle on February 6, 2009 in response to Defendants’ discovery requests
13 in this litigation. While Defendants have not asked any Oracle witness about
14 it, Ms. Catz authenticates it in her accompanying declaration as backup for
15 Oracle’s “Project Spice” financial model prepared at the time of its acquisition
16 of PeopleSoft. There is no basis for questioning its authenticity or disputing
17 its contents or its admissibility as a business record or to show Oracle’s state
18 of mind; moreover, the law permits Oracle’s expert to rely on such materials.
19 However, should Defendants make an evidentiary objection to this document,
20 Oracle reserves the right to respond to such objection.
- 21 • Exhibit 30 to the Meyer Declaration contains a worksheet labeled “Sierra-
22 Input.” It is Bates numbered ORCL00312843 and was produced by Oracle on
23 February 6, 2009 in response to Defendants’ discovery requests in this
24 litigation. While Defendants have not asked any Oracle witness about it, Ms.
25 Catz authenticates it in her accompanying declaration as backup for Oracle’s
26 “Project Sierra” financial model prepared at the time of its acquisition of
27 Siebel. There is no basis for questioning its authenticity or disputing its
28 contents or its admissibility as a business record or to show Oracle’s state of

1 mind; moreover, the law permits Oracle's expert to rely on such materials.

2 However, should Defendants make an evidentiary objection to this document,
3 Oracle reserves the right to respond to such objection.

- 4 • Exhibit 33 to the Meyer Declaration contains excerpts from an Oracle
5 document titled "FY08 Applications Development Budget Request." It is
6 Bates numbered ORCL 00545983-609 and was produced by Oracle on August
7 12, 2009 in response to Defendants' discovery requests in this litigation.
8 While Defendants have not yet asked any Oracle witness about it, on
9 information and belief, the portion of the document attached reflects the
10 hundreds of millions of dollars of annual operating expense related to Oracle's
11 Applications Unlimited program for its PeopleSoft, J.D. Edwards and Siebel
12 product lines, the principle portion of which is the costs associated with
13 ongoing research and development of those applications. There is no basis for
14 questioning its authenticity or disputing its contents or its admissibility as a
15 business record; moreover, the law permits Oracle's expert to rely on such
16 materials. However, should Defendants make an evidentiary objection to this
17 document, Oracle reserves the right to respond to such objection.

- 18 • Exhibit 34 to the Meyer Declaration contains excerpts from a December 2004
19 Oracle investor presentation titled "PeopleSoft." It is Bates numbered ORCL
20 00312888-939 and was produced on February 6, 2009 in response to
21 Defendants' discovery requests in this litigation. It includes the following
22 statement attributed to Charles Phillips, Oracle Co-President: "We are
23 retaining [PeopleSoft's] very valuable maintenance revenue, again that's the
24 real revenue stream behind this that makes this transaction work for us."
25 While Defendants did not ask Mr. Phillips about this in his deposition, there is
26 no basis for questioning its authenticity or disputing its contents or its
27 admissibility as a business record or for Oracle's state of mind; moreover, the
28 law permits Oracle's expert to rely on such materials. However, should

1 Defendants make an evidentiary objection to this document, Oracle reserves
2 the right to respond to such objection.

- 3 • Exhibit 40 to the Meyer Declaration contains the native file of a spreadsheet
4 titled "psoft cancellation rates 4-3-07.xls." It is Bates numbered ORCL
5 00103577 and was produced on January 18, 2008 in response to Defendants'
6 discovery requests in this litigation. While Defendants have not yet asked any
7 Oracle witness about it (including the Rule 30(b)(6) witness designated by
8 Oracle on this topic), on information and belief, this reflects the actual
9 PeopleSoft customer support renewal cancellation rates for Q3 2004 through
10 Q3 2007. There is no basis for questioning its authenticity or disputing its
11 contents or its admissibility as a business record; moreover, the law permits
12 Oracle's expert to rely on such materials. However, should Defendants make
13 an evidentiary objection to this document, Oracle reserves the right to respond
14 to such objection.

- 15 • Exhibit 41 to the Meyer Declaration contains excerpts of a powerpoint with
16 the Oracle logo titled "Implications of Maintenance Cancellations on
17 Applications Product Strategy." The full presentation is Bates numbered
18 ORCL 00285577-579 and was produced on January 22, 2009 in response to
19 Defendants' discovery requests in this litigation. While Defendants have not
20 yet asked any Oracle witness about it, on information and belief and based on
21 the statements in the document, the excerpts show that maintenance revenue is
22 highly important to Oracle's profitability that PeopleSoft and J.D. Edwards
23 had higher customer support cancellation rates than other Oracle applications.
24 There is no basis for questioning its authenticity or disputing its contents or its
25 admissibility as a business record or to show Oracle's state of mind;
26 moreover, the law permits Oracle's expert to rely on such materials.
27 However, should Defendants make an evidentiary objection to this document,
28 Oracle reserves the right to respond to such objection.

